

SOFTWARE LICENSE AGREEMENT
CONTRACT: CON0000485

This is an Agreement for the license of computer program software between the Texas Juvenile Justice Department, referred to in this Agreement as "Licensor," and Travis County Juvenile Probation Department, referred to in this Agreement as "Licensee." Licensor is an agency of the State of Texas located at 11209 Metric Boulevard, Austin, Texas 78758. Licensee is a political subdivision of the State of Texas located at 2515 S. Congress Ave., Austin, Texas 78704-5594. Licensor and Licensee are collectively referred to in this Agreement as the "Parties."

This Agreement is entered into under the authority of the Interlocal Cooperation Act, Texas Government Code Chapter 791.

RECITAL

In consideration of the mutual promises made in this Agreement, Licensor and Licensee agree that the terms and conditions set forth as follows will apply to the license of the computer program software described in the Agreement.

ARTICLE 1: LICENSE GRANT

1.01. Licensor grants and Licensee accepts a nonexclusive, nontransferable license to use, adapt, modify, and convert the Software described in Paragraph 1.02, subject to the conditions and for the period specified in this Agreement.

1.02. The term "Software" as used in this Agreement consists of the following:

(a) A single computer program named Caseworker. The program is:

(i) Embodied in one or more DVDs.

(ii) Designed as an automated juvenile tracking and case management system that provides an easy and concise method of collecting, storing, retrieving, and printing juvenile caseload information by the juvenile probation departments of Texas.

(iii) In source code language Visual Basic only.

ARTICLE 2: LIMITATIONS ON USE

2.01. Licensee agrees to use the software solely for its exclusive benefit and only for Licensee's internal purposes in providing juvenile probation services.

2.02. (a) Except as provided in this Paragraph 2.02, Licensee shall not copy any portion of the Software. Licensee may copy the Software only as reasonably necessary to support the authorized use. All copies of the Software whether provided by Licensor or made by Licensee, shall be and remain the property of Licensor. Licensee shall maintain a record of the number and location of all copies made of Software, including Software that has been merged with other software, and make such record available to Licensor upon request.

(b) Licensee shall reproduce and include Licensor's applicable copyright notice, patent notice, trademark, or service mark on any copies of the Software, including any modifications, adaptations, or conversions. Furthermore, each copy shall state that it is the property of Licensor in the following language:

"This copy of Caseworker is the property of the Texas Juvenile Justice Department, and is protected under the copyright, trade secret, and proprietary laws of the United States and, when applicable, the state of Texas."

2.03. Licensee shall be exclusively responsible for the supervision, management, and control of its use of the Software, including, but not limited to:

(a) Assuring proper configuration of hardware, related equipment, and devices; and compatibility with the Software.

(b) Establishing adequate operating methods.

(c) Implementing procedures sufficient to satisfy its obligations for security under this Agreement, including appropriate control of its employees to prevent misuse, unauthorized copying, modification, or disclosure of the Software.

2.04. The license granted in this Agreement shall remain in force for the useful life of the Software unless terminated prior to that time as provided in this Agreement.

2.05. Licensee may modify the Software for its own use and consolidate it into other material to form revised materials, provided that, upon termination of the license granted in this Agreement, the licensed materials shall be deleted from the revised materials and returned to Licensor or

disposed of in accordance with written instructions from Licensor. Any such revised materials shall be used strictly in accordance with the terms of this Agreement.

ARTICLE 3: PROPERTY RIGHTS

3.01. Title to the Software is reserved to Licensor. Licensee acknowledges and agrees that Licensor is and shall remain the owner of the Software and shall be the owner of all copies of the Software made by Licensee.

3.02. Licensee acknowledges that the Software is confidential in nature and constitutes a trade secret belonging to Licensor. Licensee agrees to hold Software in confidence for Licensor and not to sell, rent, license, distribute, transfer, or disclose the Software or its contents, including methods or ideas used in the Software, to anyone except to employees of Licensee when disclosure to employees is necessary to use the license granted in this Agreement. Licensee shall instruct all employees to whom any such disclosure is made that the disclosure is confidential and that the employee must keep the Software confidential by using the same care and discretion that they use with other data designated by Licensee as confidential. The confidentiality requirements of this Paragraph 3.02 shall be in effect both during the term of this Agreement and after it is terminated.

3.03. Licensee agrees to keep the Software in a secure place, under access and use restrictions designed to prevent disclosure of the Software to unauthorized persons. Licensee agrees to at least implement the security precautions that it normally uses to protect its own confidential materials and trade secrets.

3.04. Licensee agrees that any disclosure of the Software to a third party that is not authorized as provided by this section constitutes a material breach of this Agreement and shall terminate the license granted by this Agreement. Licensee is authorized to disclose the Software to a third party in order to accomplish upgrades or enhancements to the Software or to migrate the Software to a different server. Any other disclosure shall be deemed unauthorized unless Licensee has, prior to the disclosure, obtained written permission from TJJD to make the disclosure. A disclosure not consistent with that written permission shall be deemed unauthorized. The written permission can be in any form, such as a letter or email from Licensor.

3.05. Licensee agrees not to remove, mutilate, or destroy any copyright, patent notice, trademark, service mark, other proprietary markings, or confidential legends placed on or within the Software.

ARTICLE 4: PAYMENT

4.01. In payment for the license granted under this Agreement, Licensee shall pay Licensor the total sum of \$1.00 as a license fee, which is payable in full on execution of this Agreement.

4.02. Licensee shall pay all taxes that may be assessed on the Software or its use, including personal property taxes, sales and use taxes, and excise taxes, excluding taxes based on the income of the Licensor.

ARTICLE 5: DELIVERY AND SERVICE

5.01. Licensor shall deliver one copy of the computer program portion of the Software to the Licensee at Travis County Juvenile Probation Department, 2515 S. Congress Ave., Austin, Texas 78704-5594 no later than 30 days after contract is signed by both parties.

5.02. If the Software is lost or damaged during shipment, Licensor shall replace it at no additional charge to Licensee.

5.03. Licensor shall not provide any installation, testing, maintenance, programming, or technical support services to Licensee.

ARTICLE 6: NO WARRANTIES

6.01. LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTY OF TITLE OR AGAINST INFRINGEMENT, AS PROVIDED IN BUSINESS AND COMMERCE CODE SECTION 2.312, WITH RESPECT TO THE SOFTWARE. LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, AS DESCRIBED IN BUSINESS AND COMMERCE CODE SECTION 2.314, WITH RESPECT TO THE SOFTWARE. LICENSOR EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AS DESCRIBED IN BUSINESS AND COMMERCE CODE SECTION 2.315, WITH RESPECT TO THE SOFTWARE. LICENSEE EXPRESSLY DISCLAIMS THAT IT HAS CONTRACTED FOR OR RECEIVED ANY WARRANTY OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR AGAINST INFRINGEMENT WITH RESPECT TO THE SOFTWARE. THE SOFTWARE LICENSED UNDER THIS AGREEMENT IS LICENSED AS IS AND WITH ALL FAULTS AND LICENSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE.

6.02. (a) Licensee shall notify Licensor of the assertion of any claim that the Software or Licensee's use of the Software under this Agreement violates the trade secret, trademark,

copyright, patent, or other proprietary right of any other party, and shall cooperate with Licensor in the investigation and resolution of any such claim.

(b) If the Software becomes, or is likely to become, the subject of a claim of infringement of a copyright or patent, Licensor may procure for Licensee the right to continue using the Software, may replace or modify the Software to render it non-infringing, or may require that Licensee discontinue its use.

6.03. During a period of ninety (90) days after acceptance of the Software by Licensee, Licensor shall either replace defective Software or refund the amount paid for the Software, provided that Licensee has notified Licensor of the defect, and Licensor has found the Software to be defective or returned the defective Software to Licensor with a copy of proof that the warranty period has not expired, and Licensor has verified the defect. Licensee agrees that Licensee's sole and exclusive remedy for the defect described in this Paragraph 6.03 shall be limited to this corrective action.

6.04. LICENSEE AGREES THAT ITS EXCLUSIVE REMEDIES AND LICENSOR'S ENTIRE LIABILITY WITH RESPECT TO THE SOFTWARE IS AS SET FORTH IN THIS AGREEMENT. LICENSEE FURTHER AGREES THAT LICENSOR SHALL NOT BE LIABLE TO LICENSEE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ITS USE OR INABILITY TO USE THE SOFTWARE.

ARTICLE 7: TERMINATION

7.01. The license granted in this Agreement shall be terminated automatically and without further notice upon the occurrence of any of the following events:

(a) Except as provided by Section 3.04 of this Agreement, disclosure by Licensee of the Software to a third party, whether directly or indirectly and whether inadvertently or purposefully.

(b) Cessation of business by Licensee or Licensor.

(c) Commission by Licensee of an event of default as defined in Paragraph 7.02.

7.02. Licensee commits an event of default, and this Agreement and the license granted under this Agreement shall terminate, if any of the following occur:

(a) Licensee attempts to use, copy, license, or convey the Software in any manner contrary to the terms of this Agreement or in derogation of Licensor's proprietary rights in the Software.

(b) Licensee fails or neglects to perform or observe any of its existing or future obligations under this Agreement, including, without limitation, the timely payment of any sums due Licensor within thirty (30) days after notice that the payment is delinquent.

(c) Licensee makes an assignment of Licensee's business for the benefit of creditors.

(d) A petition in bankruptcy is filed by or against Licensee.

(e) A receiver, trustee in bankruptcy, or similar officer is appointed to take control of all or part of Licensee's property.

(f) Licensee is adjudicated as bankrupt.

7.03. Licensee agrees that, immediately on termination under Paragraph 7.01, it shall immediately return all copies of the Software to Licensor or, if directed to do so by Licensor, destroy all copies of the Software, certify to Licensor that it has retained no copies of the Software, and acknowledge that it may no longer use the Software, including any upgrades and enhancements. Licensee further agrees that, in the event of termination through its default, all fees or charges due for the remaining term of this Agreement shall immediately become due and payable. Upon termination of the license, Licensor's obligations under this Agreement shall cease.

ARTICLE 8: GENERAL PROVISIONS

8.01. Licensee shall not assign or otherwise transfer its rights under this Agreement, including the license granted in this Agreement or the Software obtained pursuant to this Agreement, or assign this Agreement or rights under the Agreement without the prior written consent of Licensor. Any attempt to make such an assignment without Licensor's consent shall be void.

8.02. The Parties acknowledge that this Agreement has been made in Texas and agree that it shall be construed pursuant to the laws of the State of Texas. In any legal action arising out of this Agreement, venue shall be in Travis County, Texas.

8.03. The Parties acknowledge and agree that this Agreement is the complete and exclusive statement of the mutual understanding of the Parties and that it supersedes and cancels all previous written and oral agreements and communications relating to the license that is the subject matter of this Agreement.

8.04. Any notice required or permitted by this Agreement to be given to either party shall be deemed to have been given if in writing and delivered personally or mailed by first-class, registered, or certified mail, postage prepaid and addressed:

(a) When intended for Licensee, to Travis County Juvenile Probation Department, 2515 S. Congress Ave., Austin, Texas 78704-5594; or

(b) When intended for Licensor, to Texas Juvenile Justice Department, Information Resources Department, Attn. Contract Specialist, P.O. Box 12757, Austin, TX 78711.

8.05. If any legal proceeding is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which that party may be entitled.

8.06. If any part of this Agreement is declared to be invalid by any court of competent jurisdiction, that part of the Agreement shall be severed from this Agreement and the remainder of this Agreement shall remain in full force and effect.

8.07. The Parties agree that a waiver of a breach or default under this Agreement shall not constitute a waiver of any subsequent breach or default. The Parties also agree that no failure to exercise or delay in exercising any right under this Agreement on the part of either party shall operate as a waiver of the right.

8.08. This Agreement shall be modified only by a written agreement executed by persons authorized to execute agreements on behalf of the Parties.

8.09. Licensor, by providing to Licensee the Software, source code, and any other information exchanged under this Agreement that is confidential or otherwise excepted from required disclosure under law, does not waive or affect the confidentiality of the information for purposes of state or federal law or waive the right to assert exceptions to required disclosure of the information in the future.

8.10. This agreement will remain in effect until either party terminates.

LICENSOR

Texas Juvenile Justice Department

By 

Authorized Signature

David Reilly, Executive Director

Date 5/23/16

LICENSEE

Travis County Juvenile Probation Department

By Estela P. Medina

Authorized Signature

Estela P. Medina, Chief Juvenile Probation Officer

ESTELA P. MEDINA [Print name and title]
CHIEF JUVENILE PROBATION OFFICER

Date May 12, 2016